



April 10, 2000

Mr. Paul F. Wieneskie  
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OR2000-1408

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133891.

The City of Euless (the "city"), which you represent, received a request for

all reports connected with arrest #29591 which "describe and note the arrest", [including] any police officer's "descriptions and notations" or those "descriptions and notations" contained in any statement(s) made by witnesses.

We note that the requestor previously made a request under the Public Information Act (the "Act") for the same information. In Open Records Letter No. 98-0097 (1998), we informed you that section 552.028(a) of the Government Code provided that the city was not required "to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility." The requestor's mother later requested the same information. In Open Records Letter No. 98-1516 (1998), we required that the city withhold the records from disclosure under section 552.101 of the Government Code because they contained excerpts from confidential medical records and intimate, highly embarrassing details of a rape offense.

In this case, you inform us that the request is not made under the Act or the Federal Freedom of Information Act. Rather, you inform us that this request is made under the authority of

Title 28, Code of Federal Regulations, section 20.21(g), which provides that an individual is entitled to review criminal history record information ("CHRI") maintained about the individual by a criminal justice agency "when necessary for the purpose of challenge or correction[.]" You request a decision from our office regarding whether the cited federal regulation mandates the release of the responsive information.

As a threshold issue, you ask whether the city falls under the definition of a criminal justice agency in the relevant federal regulation. Title 28, Code of Federal Regulations, section 20.3(g)(2) defines criminal justice agency as "a governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice." We believe that the city falls under this provision.

You also ask whether the submitted information constitutes "criminal history record information" ("CHRI") as contemplated by the federal regulation. Criminal history record information generated by the National Crime Information Center ("NCIC") or by its Texas counterpart, the Texas Crime Information Center ("TCIC") is confidential by statute. *See* Open Records Decision No. 655 (1997). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations, however, allow each state to follow its individual law with respect to CHRI it generates. *Id.*

Chapter 411, subchapter F of the Government Code contains the Texas state statute that restricts the release of TCIC information obtained from the Texas Department of Public Safety ("DPS"). Section 411.083 deems confidential CHRI that the DPS maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision Nos. 655 (1997), 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

We believe that the CHRI contemplated by both of these provisions is information maintained in the NCIC and TCIC databases. *See* Open Records Decision No. 565 (1990). To the extent that the requestor is seeking NCIC or TCIC database information, we believe that the requestor may be entitled to access under the specific statutory requirements. *See*

*id.* In this case, however, the submitted information consists of offense reports, arrest reports, and other supplemental reports created and maintained by the Euless Police Department in connection with particular arrests. We do not believe that such information constitutes CHRI as contemplated by the cited federal regulation or by section 411 of the Government Code. *See* 28 C.F.R. § 20.3(d); Gov't Code § 411.081, .082. Therefore, we do not believe that the submitted information is subject to release under Title 28, part 20 of the Code of Federal Regulations.

You also ask whether the city may “merely decline to respond to the request . . . under the authority of[section] 552.028[.]” Section 552.028 of the Government Code generally limits a governmental body’s obligation to respond to public information requests from an incarcerated individual or that individual’s agent. Section 552.028 is not an exception to disclosure under the Public Information Act. Because we find that the specific statutory provisions concerning CHRI are not applicable, we believe that section 552.028 is still applicable to the requestor in this instance. *See Conely v. Peck*, 929 S.W.2d 630 (Tex. App.--Austin 1996, no writ) (governmental body may provide information regarding an inmate to an inmate).<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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<sup>1</sup>We note section 552.353(b) of the Government provides:

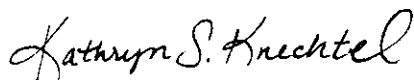
It is an affirmative defense to prosecution [for failing or refusing to give access to public information] that the officer for public information reasonably believed that public access to the requested information was not required and that the officer: (1) acted in reasonable reliance on . . . a written interpretation of this chapter contained in an opinion of . . . the attorney general[.]

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel  
Assistant Attorney General  
Open Records Division

JBH/KSK/ch

Ref: ID# 133891

Encl. Submitted documents

cc: Mr. David Dwight Bailey  
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(w/o enclosures)